

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the following remarks. Claims 1-5 and 8-24 are pending in the present application of which claims 1, 5, 8 and 20 are independent. Claims 6 and 7 are canceled herein.

Claims 1-6, 8-14, 16-17 and 19-24 were rejected under 35 U.S.C. §102(b) as being anticipated by Aristides et al. (5,630,119) ("Aristides").

Claims 7 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Aristides, in view of West et al. (6,971,121) ("West").

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Aristides, in view of Tomsen (2002/0013950).

These rejections are traversed for the reasons stated below.

**Claim Rejection Under 35 U.S.C. §102**

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-6, 8-14, 16-17 and 19-24 were rejected under 35 U.S.C. §102(b) as being anticipated by Aristides et al. (5,630,119) ("Aristides").

Claim 1 has been amended to recite,

data entry interface for receiving an input of a program request,  
wherein said program request identifies a particular program being requested;

...

search means for searching said electronic program guide for said  
particular, requested program in said program request, wherein if said  
particular, requested program is not in said electronic program guide in said  
memory, said search means sends said program request to said head end.

Aristides fails to teach a program request for a particular program, and fails to teach sending the program request to the head-end if the requested program is not in an electronic program guide (EPG) in the end user device.

Aristides discloses in column 5, lines 43-59 that an EPG at the user's home includes a grid schedule showing channels and time slots. When a user scrolls horizontally on the EPG to a new time slot, such as the 9:30-10:00 time slot described in line 53, the EPG issues a request to the database 70 in the head-end 22 for any program records in that time slot for the channels currently shown on the EPG, such as channels 5, 6 and 7. Thus, the request sent to the database 70 is for any program records in the time slot for the available channels.

However, the request sent to the databasc 70 does not identify a particular program. Hence, the system of Aristides suffers the problem of many systems, where the user must manually

scroll the EPG to find when a particular program of interest is being broadcasted or to determine whether that program will be broadcasted.

Independent claim 5 has been amended to recite,

said interactive server storing a count of a plurality of received program requests for the particular program not in an electronic program guide of each of one or more end user devices and comparing a count to a trip limit, and

said interactive server selectively adding said particular program to one of said electronic program guide in the end user device or an extended database schedule based on the comparison of the count to the trip limit.

Aristides fails to teach counting a number of requests for a particular program determined not to be in one or more end user devices and comparing the count to a trip limit. As described above, Aristides discloses sending a request for program records in a time slot in response to horizontal scrolling of an EPG at the user's home. Aristides does not disclose counting the number of requests, let alone counting requests for a particular program determined not to be in an EPG at the user's home. Thus, it follows that Aristides also fails to teach comparing the count to a limit, and adding the particular program to the EPG or a database in response to a comparison of the count to the trip limit.

Independent 8 recites features similar to claim 1 described above, which are not taught by Aristides. Independent claim 20 recites a program request identifying a particular program being requested. As described above, Aristides fails to send a request identifying a particular program. Instead, Aristides requests any programs in a time slot. Claim 20 also recites,

selectively adding said particular program to at least one of said electronic program guide or extended database in response to a plurality of said miss indications for said request particular program.

Aristides fails to teach determining when a plurality of miss indications for a particular program are received, and selectively adding the program to the EPG or database in response to the plurality of misses. No count of miss indications for a particular program are kept in Aristides.

Dependent claim 14 recites features similar to claim 5 not taught by Aristides.

For at least these reasons, claims 1-5, 8-14, 16-17 and 19-24 are believed to be allowable.

#### Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S.\_, 82 USPQ2d 1385 (2007):

"Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining

Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S.\_, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

### **Claims 7 and 15**

Claims 7 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Aristides, in view of West et al. (6,971,121) (“West”). Claim 7 is canceled herein and

dependent claim 15 is believed to be allowable for at least the reason its independent claim 8 is believed to be allowable.

Furthermore, West was combined with Aristides to allegedly teach the claimed interactive server in column 9, lines 39-44. Column 9, lines 39-44 of West discloses out-of-band signaling to and from a head-end 11, but discloses nothing related to an interactive server connected to a head-end.

The rejection states that West discloses a video-on-demand (VOD) server connected to a head-end to handle user requests. It is noted that column 8, line 47 of West discloses a VOD application server. However, West fails to teach the VOD application server stores a count of requests for a particular program, and also fails to teach selectively adding the program to the EPG or database in response to the count being greater than or equal to one or more trip limits, as recited in claim 15.

#### **Claim 18**

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Aristides, in view of Tomsen (2002/0013950). Dependent claim 18 is believed to be allowable for at least the reason its independent claim 8 is believed to be allowable. Tomsen was combined with Aristides to disclose a PC connected to an end user device. Tomsen, however, fails to remedy the deficient teachings of Aristides described with respect to independent claim 8.

**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 503290.

Respectfully submitted,

Dated: September 2, 2008

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